

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

By: *JAMES N. HATTEN*, Clerk
APR 18 2011
U.S.D.C.-Atlanta
Deputy Clerk

FAYELYNN SAMS and HAROLD)
SAMS, individually, and on behalf of)
class of all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
WINDSTREAM COMMUNICATIONS,)
INC., WINDSTREAM GEORGIA, LLC,)
and WINDSTREAM GEORGIA)
COMMUNICATIONS, LLC,)
)
Defendants.)

CIVIL ACTION

FILE NO. 1:10CV3525-TCB

DEFENDANTS' MOTION FOR LEAVE TO FILE UNDER SEAL

Defendants respectfully seek the Court's permission to file the April 14, 2011 Affidavit of Lethlyn Pumphrey-Harp, submitted herewith, under seal. Defendants have attached a proposed order as Exhibit 1.

Ms. Harp is an employee of Windstream Communications. Her affidavit authenticates two documents, the grand jury subpoena jury that is the subject of Plaintiffs' Complaint (the "Subpoena," attached as Exhibit A to the affidavit), and Windstream's response to the Subpoena (Exhibit B to the affidavit). Defendants

ask the Court's permission to file this affidavit and its two exhibits under seal for the following reasons.

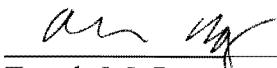
Defendants believe that both the Subpoena and Defendants' response to the Subpoena are subject to Georgia state confidentiality restrictions that prevent them from publicly disclosing these documents. "There is no doubt that the preservation of the secrecy of grand jury proceedings is ... a well-recognized principle in Georgia." *In re Gwinnett County Grand Jury*, 284 Ga. 510, 512 (2008) (citation omitted); *Ward v. State*, __ Ga. __, 2011 Ga. LEXIS 157, at *6 (Ga. Feb. 28, 2011) ("secrecy is maintained with regard to grand jury proceedings."). The Georgia Supreme Court has held that documents and testimony received by a grand jury are not subject to disclosure under Georgia's general rule requiring the public disclosure of court records. *In re Gwinnett County Grand Jury*, 284 Ga. at 512. As the Georgia Supreme Court explained, "they are not court records to which the public and press in Georgia have traditionally enjoyed access." *Id.*

While Defendants believe that the grand jury investigation the generated the subject subpoena is concluded, the United States Supreme Court has stated that the conclusion of a grand jury investigation does not eliminate the need to maintain the secrecy of the proceedings. *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 222 (1979) ("the interests in grand jury secrecy, although reduced, are not

eliminated merely because the grand jury has ended its activities.”); *see also In re Request for Access to Grand Jury Materials*, 833 F.2d 1438, 1441 (11th Cir. 1987) (“Although the need for secrecy is less compelling in view of the termination of the grand jury, some secrecy interests remain.”). This is because maintaining the secrecy of grand jury proceedings, witnesses and documents “protects the future use of the grand jury as an investigative tool.” *In re Gwinnett County Grand Jury*, 284 Ga. at 513.

Because Georgia law requires that grand jury proceedings, including the documents and testimony received by a grand jury, must be held confidential, Defendants respectfully request that the Court permit Defendants to file the April 14, 2011 Affidavit of Lethlyn Pumphrey-Harp, and its exhibits, under seal.

Respectfully submitted this 18th day of April, 2011.



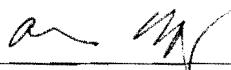
Frank M. Lowrey
Georgia Bar No. 410310
lowrey@bmelaw.com
Alison B. Prout
Georgia Bar No. 141666
prout@bmelaw.com

BONDURANT, MIXSON & ELMORE, LLP **Attorneys for Defendants**
One Atlantic Center
1201 West Peachtree Street, N.W.
Atlanta, Georgia 30309
Telephone: (404) 881-4100
Facsimile: (404) 881-4111

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), I hereby certify that this document complies with the font and point selections set forth in Local Rule 5.1(C). This document was prepared in Times New Roman 14 point font.

Respectfully submitted, this 18th day of April, 2011.



Alison B. Prout
Georgia Bar No. 141666
Email: *prout@bmelaw.com*

CERTIFICATE OF SERVICE

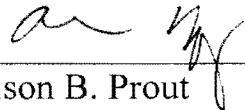
I hereby certify that on this day, I served a true and correct copy of the within and foregoing **DEFENDANTS' MOTION FOR LEAVE TO FILE UNDER SEAL** upon counsel of record by U.S. Mail with adequate postage thereon, addressed as follows:

Joshua A. Millican, Esq.
Law Office of Joshua A. Millican, P.C.
The Grant Building, Suite 607
44 Broad Street, N.W.
Atlanta, Georgia 30303

Lisa T. Millican, Esq.
Greenfield Millican P.C.
607 The Grant Building
44 Broad Street, N.W.
Atlanta, Georgia 30303

Matthew C. Billips, Esq.
Billips & Benjamin LLP
One Tower Creek
3101 Towercreek Parkway, Suite 190
Atlanta, Georgia 30339

This 18th day of April, 2011.



Alison B. Prout
Georgia Bar No. 141666

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FAYELYNN SAMS and HAROLD SAMS, individually, and on behalf of class of all others similarly situated,)
Plaintiffs,)
v.) **CIVIL ACTION**
WINDSTREAM COMMUNICATIONS, INC., WINDSTREAM GEORGIA, LLC, and WINDSTREAM GEORGIA COMMUNICATIONS, LLC,) **FILE NO. 1:10CV3525-TCB**
Defendants.)

[PROPOSED] ORDER

For good cause shown, the Court hereby GRANTS Defendants' Motion for Leave to File Under Seal and directs the Clerk to file the April 14, 2011 Affidavit of Lethlyn Pumphrey-Harp, and its exhibits, under seal permanently.

SO ORDERED this ____ of April, 2011.

The Honorable Timothy C. Batten Sr.
United States District Judge for the
Northern District of Georgia